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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Agenda item 8

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO
ANY FORM OF DETENTION OR IMPRISONMENT

Argentina, Australia*, Austria, Belgium*, Benin, Bulgaria, Canada, Cape Verde, Chile, Czech Republic, Denmark, El Salvador, Finland*, France, Germany, Greece*, Haiti*, Honduras*, Hungary*, Ireland, Italy, Lithuania*, Luxembourg*, Madagascar, Nepal, Netherlands, Norway*, Poland*, Portugal*, Republic of Korea, Romania*, Russian Federation, Slovakia*, Slovenia*, South Africa, Spain*, Sweden*, Switzerland*, United Kingdom of Great Britain and Northern Ireland and Uruguay: draft resolution

1997/... Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

The Commission on Human Rights,

Guided by articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 14 and 26 of the International Covenant on Civil and Political Rights, and bearing in mind the Vienna Declaration and Programme of Action (A/CONF.157/23), in particular, Part I, paragraph 27, and Part II, paragraphs 88, 90 and 95 thereof,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

Recalling its resolution 1994/41 of 4 March 1994, in which it requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers,

Recalling also its resolution 1995/36 of 3 March 1995, in which it endorsed the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers",

Recalling further General Assembly resolution 40/32 of 29 November 1985, in which the Assembly endorsed the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and Assembly resolution 40/146 of 13 December 1985,

Recalling General Assembly resolution 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and invited Governments to respect them and to take them into account within the framework of their national legislation and practice,

Recalling also the recommendations adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, regarding, among other things, the invitation addressed to Member States to ensure the independence and impartiality of the judiciary and the proper functioning of prosecutorial and legal services in the field of penal justice and police affairs, taking into account the Basic Principles on the Independence of the Judiciary,

Recalling further the Statement of Principles on the Independence of the Judiciary adopted in Beijing in August 1995 by the Sixth Conference of Chief Justices of Asia and the Pacific, and the Cairo Declaration, adopted in November 1995 by the Third Conference of Francophone Ministers of Justice,

Acknowledging the importance for the Special Rapporteur of being able to cooperate closely, in the framework of his mandate, with the Centre for Human

Rights in the field of advisory services and technical cooperation, which could contribute to guaranteeing the independence of judges and lawyers,

Recognizing the importance of the role of non-governmental organizations, bar associations and professional associations of judges in the defence of the principles of the independence of lawyers and judges,

Noting with concern the increasingly frequent attacks on their independence suffered by judges, lawyers and court officers, and aware of the close link between the weakening of safeguards for judges, lawyers and court officers and the frequency and gravity of violations of human rights,

Taking note of the report (E/CN.4/1997/32) submitted by the Special Rapporteur on the implementation of his mandate,

1. Takes note of the report submitted by the Special Rapporteur on the activities relating to his mandate;

2. Also takes note of the cooperative working methods that the Special Rapporteur has adopted to draw up his report and implement his mandate, as described in Commission resolution 1994/41;

3. Welcomes the numerous exchanges the Special Rapporteur has had with several intergovernmental and international organizations and United Nations bodies, and encourages him to continue along this path;

4. Notes with appreciation the determination of the Special Rapporteur to achieve as wide a dissemination as possible of information about existing standards relating to the independence and impartiality of the judiciary and the independence of the legal profession in conjunction with the publications and promotional activities of the Centre for Human Rights;

5. Invites the United Nations High Commissioner for Human Rights to continue to provide technical assistance to train judges and lawyers and to associate the Special Rapporteur in the elaboration of a manual on the training of judges and lawyers in the field of human rights;

6. Urges all Governments to assist the Special Rapporteur in the discharge of his mandate and to transmit to him all the information requested;

7. Encourages Governments that face difficulties in guaranteeing the independence of judges and lawyers, or that are determined to take measures to implement these principles further, to consult and to consider the services of the Special Rapporteur, for instance by inviting him to their country if the Government concerned deems it necessary;

8. Decides to extend the mandate of the Special Rapporteur for a further period of three years, requests him to submit a report on the activities relating to his mandate to the Commission at its fifty-fourth session, and decides to consider this question at that session;

9. Requests the Secretary-General, within the limits of the regular budget, to provide the Special Rapporteur with any assistance needed for the discharge of his mandate;

10. Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council, taking note of Commission on Human Rights resolution 1997/... of ... April 1997, endorses the Commission's decision to extend the mandate of the Special Rapporteur on the independence of judges and lawyers and its request to the Special Rapporteur to submit a report on the activities relating to his mandate to the Commission at its fifty-fourth session."

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Agenda item 8 (d)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Argentina, Austria, Benin, Bosnia and Herzegovina*, Brazil, Bulgaria, Chile, Costa Rica*, Cyprus*, Czech Republic, Denmark, Dominican Republic, El Salvador, Finland*, France, Germany, Greece*, Guatemala*, Honduras*, Hungary*, Italy, Liechtenstein*, Luxembourg*, Mexico, Netherlands, Nicaragua, Norway*, Peru*, Poland*, Portugal*, Romania*, Russian Federation, Senegal*, Slovakia*, Slovenia*, South Africa, Spain, Sweden*, Switzerland*, The former Yugoslav Republic of Macedonia, Ukraine, Uruguay, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela*: draft resolution

1997/... Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Commission on Human Rights,

Recalling its resolution 1992/43 of 3 March 1992, by which it established an open-ended working group to elaborate a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, using as a basis for its discussions the draft text proposed by the Government of Costa Rica (E/CN.4/1991/66), and decided to consider the question at its forty-ninth session,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Recalling also the subsequent resolutions on the subject, in particular resolution 1996/22 of 23 July 1996 of the Economic and Social Council in which the Council authorized the working group to meet in order to continue its work,

Recalling further that the World Conference on Human Rights firmly declared that efforts to eradicate torture should, first and foremost, be concentrated on prevention and called for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention,

1. Takes note of the report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (E/CN.4/1997/33 and Add.1), and warmly welcomes the progress made during the working group's fifth session;

2. Requests the open-ended working group to meet for a period of two weeks prior to the fifty-fourth session of the Commission in order to continue its work, with a view to completing expeditiously a final and substantive text, and to report on its work to the Commission at that session;

3. Requests the Secretary-General to transmit the report of the working group to all Governments, the specialized agencies, the chairpersons of the human rights treaty bodies and to intergovernmental and non-governmental organizations, and to invite them to submit their comments to the working group;

4. Also requests the Secretary-General to invite Governments, the specialized agencies and relevant intergovernmental and non-governmental organizations, as well as the Chairperson of the Committee against Torture and the Special Rapporteur on the question of torture, to participate in the activities of the working group;

5. Further requests the Secretary-General to extend all the necessary facilities to the working group for its meeting prior to the fifty-fourth session of the Commission;

6. Decides to examine the report of the working group at its fifty-fourth session under the sub-item entitled "Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment" in the context of the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment";

7. Recommends the following draft resolution to the Economic and Social Council for adoption:

"The Economic and Social Council,

"Recalling Commission on Human Rights resolution 1997/.. of .. April 1997,

"1. Authorizes an open-ended working group of the Commission on Human Rights to meet for a period of two weeks prior to the fifty-fourth session of the Commission in order to continue the elaboration of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

"2. Requests the Secretary-General to extend to the working group all necessary facilities for its meetings and to transmit the report of the working group (E/CN.4/1997/33 and Add.1) to Governments, the specialized agencies, the chairpersons of the human rights treaty bodies and the intergovernmental and non-governmental organizations concerned."

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Argentina, Australia*, Austria, Belgium*, Canada, Chile, Cyprus*, Czech Republic, Denmark, Finland*, France, Germany, Greece*, Hungary*, Iceland*, Ireland, Italy, Liechteinstein*, Lithuania*, Luxembourg*, Malta*, Netherlands, Norway*, Republic of Korea, Romania*, Russian Federation, San Marino*, Senegal*, Slovakia*, Slovenia*, Spain*, Switzerland*, Ukraine and United Kingdom of Great Britain and Northern Ireland: draft resolution

1997/... Torture and other cruel, inhuman or degrading treatment or punishment

The Commission on Human Rights,

Appalled at the widespread occurrence of torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture is a non-derogable right and that the prohibition of torture is explicitly affirmed in article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenan on Civil and Political Rights, the Declaration on the Protection of All

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* In accordance with rule 69, paragraph 3, of the rules of procedure o the functional commissions of the Economic and Social Council.

Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as in the relevant provisions of other international human rights instruments such as the Convention on the Rights of the Child, the Vienna Declaration and Programme of Action, the Declaration on the Elimination of Violence against Women and the four Geneva Conventions of 1949 for the protection of war victims;

Recalling all relevant resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights, in particular Commission resolution 1996/33 of 19 April 1996 and General Assembly resolution 51/86;

Mindful that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that such actions constitute a criminal attempt to destroy a fellow human being physically and mentally, which can never be justified under any circumstances, by any ideology or by any overriding interest, and convinced that a society that tolerates torture can never claim to respect human rights,

1. Takes note of the report of the Secretary-General on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1997/28);

2. Urges all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority;

3. Invites all States ratifying or acceding to the Convention and those States parties that have not yet done so to make the declaration provided for in articles 21 and 22 of the Convention and to consider the possibility of withdrawing their reservations to article 20;

4. Encourages States parties to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

5. Urges all States parties to comply strictly with their obligations in accordance with article 19 of the Convention, including their reporting obligations, and, in particular, those States parties whose reports are long overdue to submit their reports forthwith;

6. Calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

7. Urges all Governments to promote the speedy and full implementation of the Vienna Declaration and Programme of Action and, in particular, of Part II, section B.5 relating to freedom from torture, in which it is stated that States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law;

8. Stresses that under article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment acts of torture must be made an offence under domestic criminal law and that they are a grave breach of the Geneva Conventions of 1949, with the perpetrators liable to prosecution and punishment;

9. Reminds Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture;

10. Stresses in particular that all allegations of torture or cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate such acts must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have taken place, and that national legal systems should ensure that the victims of such acts should obtain redress and be awarded fair and adequate compensation and appropriate socio-medical rehabilitation;

11. Emphasizes the obligation of States parties under article 10 of the Convention to ensure education and training for personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, and calls upon the High Commissioner for Human Rights, in conformity with his mandate established in General Assembly resolution 48/141 of 20 December 1993, to provide, at the request of Governments, advisory services in this regard, as well as technical assistance in the development, production and distribution of appropriate teaching material for this purpose;

12. Stresses in this context that States must not punish personnel referred to in the preceding paragraph for not obeying orders to commit acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

13. Welcomes the report of the Committee against Torture on its fifteenth and sixteenth sessions (A/51/44);

14. Also welcomes the work of the Committee against Torture and its practice of formulating concluding observations after the consideration of reports, as well as its practice of carrying out inquiries into cases where there are indications of the systematic practice of torture in States parties;

15. Urges States parties to take fully into account the conclusions and recommendations made by the Committee at the end of the consideration of their reports;

16. Requests the Secretary-General to submit to the Commission an annual report on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

17. Requests the General Assembly, in preparing the fiftieth anniversary of the Universal Declaration of Human Rights, to proclaim 26 June a United Nations international day in support of the victims of torture and the total eradication of torture, and the effective functioning of the Convention against Torture, which entered into force on 26 June 1987;

18. Commends the Special Rapporteur on his report (E/CN.4/1997/7 and Add.1-3);

19. Stresses again the recommendations of the Special Rapporteur as compiled in document E/CN.4/1995/34;

20. Reminds all States that prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment;

21. Invites the Special Rapporteur to continue to examine questions concerning torture directed against women and conditions conducive to such torture, to make appropriate recommendations concerning the prevention and redress of gender-specific forms of torture, and to exchange views with the Special Rapporteur on violence against women with a view to enhancing further their effectiveness and mutual cooperation;

22. Also invites the Special Rapporteur to continue to consider questions relating to the torture of children and conditions conducive to such torture and to make appropriate recommendations concerning the prevention of such torture;

23. Approves the methods of work employed by the Special Rapporteur as set out in his report (E/CN.4/1997, annex), in particular with regard to urgent appeals, encourages him to continue to respond effectively to credible

and reliable information that comes before him and invites him to continue to seek the views and the comments of all concerned, including Governments, in the elaboration of his report;

24. Considers it desirable that the Special Rapporteur continue to exchange views with the relevant human rights mechanisms and bodies, especially the Committee against Torture and the United Nations High Commissioner for Human Rights, in particular with a view to enhancing further their effectiveness and mutual cooperation, while avoiding unnecessary duplication, and that he should pursue cooperation with relevant United Nations programmes, notably that on crime prevention and criminal justice;

25. Calls on all Governments to cooperate with and assist the Special Rapporteur on torture in the performance of his task, to supply all necessary information requested by him and to react appropriately to his urgent appeals;

26. Urges those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer expeditiously;

27. Encourages all Governments to give serious consideration to inviting the Special Rapporteur to visit their countries, especially those mentioned by the Special Rapporteur in his report, so as to enable him to fulfil his mandate even more effectively;

28. Calls upon the Special Rapporteur to continue to consider including information in his report on the follow-up by Governments to his recommendations, visits and communications;

29. Invites the Special Rapporteur to submit a report to the Commission at its fifty-fourth session;

30. Takes note of the report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (E/CN.4/1997/27 and Add.1 and A/51/465);

31. Expresses its appreciation to the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture for the work it has accomplished;

32. Expresses its gratitude and appreciation to those Governments, organizations and individuals that have already contributed to the United Nations Voluntary Fund for Victims of Torture;

33. Appeals to all Governments, organizations and individuals in a position to do so to contribute annually to the Fund, if possible with a substantial increase in the number and level of contributions in order to take into consideration the ever-increasing demand for assistance;

34. Stresses the need for contributions to the Fund on a regular basis and takes note of the request of the Board of Trustees that such contributions be paid before the annual meeting in May of the Board of Trustees of the Fund in order, inter alia, to prevent the interruption of programmes in the continuation of which the Fund plays an instrumental role;

35. Stresses in particular the increasing demand for assistance to rehabilitation services for victims of torture;

36. Requests the Secretary-General to continue to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

37. Renews its request to the Secretary-General to transmit to all Governments the appeals of the Commission for contributions to the Fund;

38. Calls upon the Board of Trustees of the Fund to report to the Commission at its fifty-fourth session and present an updated assessment of the global need for international funding of rehabilitation services for torture victims;

39. Requests the Secretary-General to continue to keep the Commission informed of the operations of the Fund on an annual basis;

40. Urges States parties whose arrears predate the provision made by the Secretary-General for funding the Committee against Torture from the regular budget to fulfil their obligations forthwith;

41. Requests the Secretary-General to ensure, within the overall budgetary framework of the United Nations the provision of an adequate and stable level of staffing as well as the necessary technical facilities for the United Nations bodies and mechanisms dealing with torture, in order to ensure their effective performance;

42. Decides to continue to consider their questions at its fifty-fourth session.